

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	§	Chapter 11
	§	
FRANCHISE GROUP, INC., <i>et al.</i> , ¹	§	Case No. 24-12480 (JTD)
	§	
Debtors.	§	(Jointly Administered)
	§	
	§	Re: D.I. 487, 498

**OBJECTION OF BC EXCHANGE SALT POND TO (I) NOTICE OF
POSSIBLE ASSUMPTION AND ASSIGNMENT AND CURE COSTS WITH
RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND
(II) NOTICE OF FILING OF PROPOSED ORDER (A) APPROVING THE SALE OF
THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND
ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND
(C) GRANTING RELATED RELIEF**

BC Exchange Salt Pond (“BCESP”) by and through its undersigned counsel, hereby objects (the “Objection”) to the Debtors’ *Notice of Possible Assumption and Assignment and Cure Costs With Respect to Executory Contracts and Unexpired Leases* [D.I. 487] (the “Assumption Notice”) and the Debtors’ *Notice of Filing of Proposed Order (A) Approving the Sale of the Debtors’ Assets*

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are Franchise Group, Inc. (1876), Freedom VCM Holdings, LLC (1225), Freedom VCM Interco Holdings, Inc. (2436), Freedom Receivables II, LLC (4066), Freedom VCM Receivables, Inc. (0028), Freedom VCM Interco, Inc. (3661), Freedom VCM, Inc. (3091), Franchise Group New Holdco, LLC (0444), American Freight FFO, LLC (5743), Franchise Group Acquisition TM, LLC (3068), Franchise Group Intermediate Holdco, LLC (1587), Franchise Group Intermediate L, LLC (9486), Franchise Group Newco Intermediate AF, LLC (8288), American Freight Group, LLC (2066), American Freight Holdings, LLC (8271), American Freight, LLC (5940), American Freight Management Company, LLC (1215), Franchise Group Intermediate S, LLC (5408), Franchise Group Newco S, LLC (1814), American Freight Franchising, LLC (1353), Home & Appliance Outlet, LLC (n/a), American Freight Outlet Stores, LLC (9573), American Freight Franchisor, LLC (2123), Franchise Group Intermediate B, LLC (7836), Buddy’s Newco, LLC (5404), Buddy’s Franchising and Licensing LLC (9968), Franchise Group Intermediate V, LLC (5958), Franchise Group Newco V, LLC (9746), Franchise Group Intermediate BHF, LLC (8260); Franchise Group Newco BHF, LLC (4123); Valor Acquisition, LLC (3490), Vitamin Shoppe Industries LLC (3785), Vitamin Shoppe Global, LLC (1168), Vitamin Shoppe Mariner, LLC (6298), Vitamin Shoppe Procurement Services, LLC (8021), Vitamin Shoppe Franchising, LLC (8271), Vitamin Shoppe Florida, LLC (6590), Betancourt Sports Nutrition, LLC (0470), Franchise Group Intermediate PSP, LLC (5965), Franchise Group Newco PSP, LLC (2323), PSP Midco, LLC (6507), Pet Supplies “Plus”, LLC (5852), PSP Group, LLC (5944), PSP Service Newco, LLC (6414), WNW Franchising, LLC (9398), WNW Stores, LLC (n/a), PSP Stores, LLC (9049), PSP Franchising, LLC (4978), PSP Subco, LLC (6489), PSP Distribution, LLC (5242), Franchise Group Intermediate SL, LLC (2695), Franchise Group Newco SL, LLC (7697), and Educate, Inc. (5722). The Debtors’ headquarters is located at 109 Innovation Court, Suite J, Delaware, Ohio 43015.

Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief [D.I. 498] (the “Notice of Proposed Sale Order”), which includes a proposed Asset Purchase Agreement (the “APA”), served by the above-captioned debtors and debtors-in-possession (the “Debtors”) and in support thereof would respectfully show as follows:

**I.
OBJECTION**

1. BCESP is a landlord under a nonresidential real property lease, as amended (the “Lease”) dated September 26, 2017, for approximately 7,357 square feet of Floor Area in the Salt Pond Shopping Center, as more particularly described in the Lease (the “Premises”), with Debtor PSP Stores, LLC as tenant (the “Tenant”). BCESP is also a party to a Guaranty with Debtor Pet Supplies “Plus,” LLC, as guarantor in connection with the Lease (the “Guaranty”), which is attached as Exhibit F to the Lease. The Assumption Notice lists the Lease, as amended. The Guaranty is a part of the Lease. BCESP objects to any assumption or assumption and assignment of the Lease unless the Guaranty is also assumed or assumed and assigned to an appropriate affiliate or parent of the assignee of the Lease who satisfies BCESP’s requirements with regard to being a guarantor with regard to the Lease.

2. BCESP objects to the cure amounts set forth in the Assumption Notice and reserves all rights to object to any winning bidder on any basis.

3. The Debtors’ Assumption Notice lists a proposed cure amount under the Lease of \$0.00 (the “Proposed Cure Amount”). While the Proposed Cure Amount appears to be currently correct with regard to liquidated amounts, as set forth below additional amounts will come due that must be paid as part of any assumption or assumption and assignment and BCESP objects to the Proposed Cure Amount.

4. BCESP has incurred and continues to incur attorneys' fees in connection with enforcing its rights under the Lease in the Bankruptcy Case which must be paid as part of the cure. Lease § 17.8. Attorneys' fees continue to accrue and should be paid as part of the cure.

5. The amount necessary to cure defaults under the Lease may increase prior to the actual assumption or assumption and assignment of the Lease if the Debtors do not pay all amounts that accrue after the date of this Objection. Any assumption and/or assignment of the Lease should be conditioned upon full compliance with section 365 of the Bankruptcy Code, including, but not limited to, the payment to BCESP of all amounts due and owing under the Lease through the effective date of the assumption and assignment of the Lease.

6. Further, any order approving cure amounts must provide that the proposed assignee is liable as part of the cure for the following pursuant to the terms of the Lease regardless of when the charges accrued: (i) pre-petition and post-petition rent and other charges under the Lease, (ii) amounts due and owing under the Lease which may be unbilled as of the date of assumption or assumption and assignment, including but not limited to year-end adjustments for common area maintenance expenses, taxes and similar charges, (iii) any regular or periodic adjustment of charges under the Lease which were not due or had not been determined as of the date of this Objection or the date of assumption or assumption and assignment, (iv) any non-monetary defaults, (v) attorneys' fees, (vi) insurance and indemnification obligations under the Lease, and (vii) percentage rent. To the extent that the Debtors remain responsible for any of the foregoing cure amounts, BCESP respectfully requests that funds sufficient to encompass such estimated cure amounts be placed into a separate, segregated account and be earmarked to pay BCESP for such amounts when they come due and owing.

7. The Debtors should not be allowed to assume and assign the Lease free and clear of any obligations under the Lease, including, but not limited to, all of the obligations identified herein, including, but not limited to, indemnification obligations which the Proposed Sale Order appears to seek to sell free and clear of.

8. The Premises is “real property in a shopping center” as that term is used in section 365(b)(3) of the Bankruptcy Code, any assumption and assignment must comply with all provisions of the Lease, including, but not limited to, those covering use, radius, exclusivity, tenant mix and balance.

9. BCESP reserves all rights in regard to proof of adequate assurance once a successful bidder has been identified for the Lease. BCESP joins in objections asserted by other landlords in the Bankruptcy Case to the Assumption Notice, the Proposed Sale Order and the APA to the extent such objections are not inconsistent with the relief requested in this Objection.

II.

RESERVATION OF RIGHTS

10. BCESP reserves the right to assert additional amounts, true-ups, year-end adjustments, and reconciliations that have not yet come due that may come due and have to be calculated.

11. BCESP reserves the right to amend and/or supplement this Objection, including, without limitation, adding and supplementing objections to the Assumption Notice, the Proposed Sale Order, the APA, or amending and or supplementing the Cure Amounts. BCESP reserves the right to assert additional amounts that may come due and owing prior to the proposed assumption or assumption and assignment of the Lease.

WHEREFORE, BCESP respectfully requests that the Court sustain its objections to the Assumption Notice, the Proposed Sale Order, and the APA, require that the full amount asserted

herein is paid contemporaneously with any assumption and assignment, require that any additional amounts asserted by BCESP be paid prior to any assumption and assignment, require that any order approving cures or the sale contain the provisions set forth in this Objection, and for such other and further relief to which BCESP may show itself to be justly entitled at law or in equity.

Dated: January 3, 2025
Wilmington, Delaware

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/s/ Morgan L. Patterson

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ATTORNEYS FOR BC EXCHANGE SALT POND